Service Acquisition: An Essential Ingredient for Successful Transformation

Presented by:
Mr. Julius Rothlein HQMC (CL)
&
Major Matthew Fowler HQMC (LB)

Business Performance Office Training, May 2004

Who are these guys?

- We’re from Headquarters and we’re here to help.
  - And one is a lawyer!
- Contrary to popular belief, contracting officers and lawyers don’t have to be a speed bump on your way to meeting your requirement.
- Repository of great Service Acquisition success and horror stories.
- Lawyer = Last Man Standing from the genesis of the RGFSC!

Why should I care?

- Acquisition of services is and will continue to be the method of choice for DoD to obtain non-core requirements.
- Business Performance Offices are the obvious touchstone to seek and find organizational efficiencies through Service Acquisition.
  - Translation: “If your boss hasn’t asked you to look at this, don’t worry, he/ she will.”
- Given our shrinking pool of resources buying smartly becomes exponentially more important in the years ahead.
- While not necessarily core competencies, these services do impact the prosecution and success of the Marine Corps mission.

What is Service Acquisition and Why is it Special?

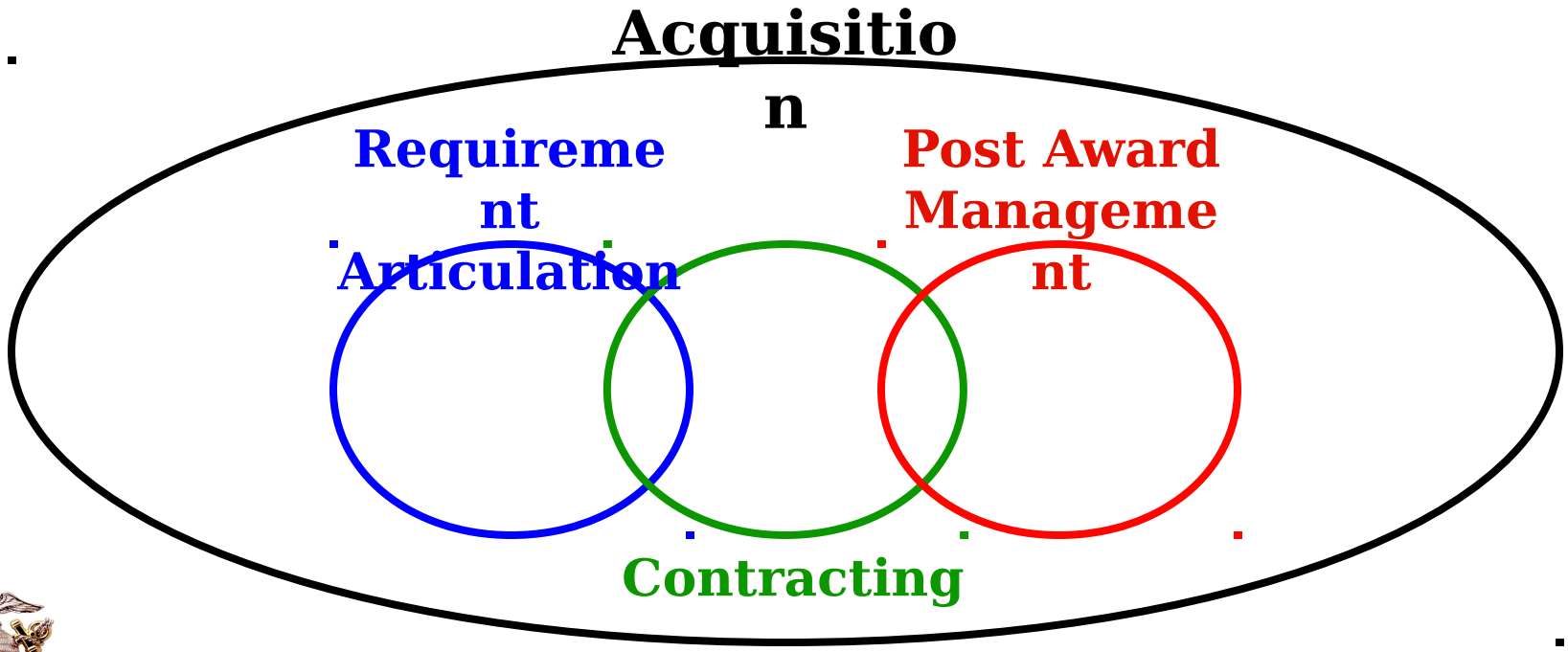
- Service acquisition involves all phases of procurement from requirement generation to post award management and closeout.
- Typically requires a higher degree of management involvement to achieve success.
- Continues to be a means for the Marine Corps to maximize our strained organic human capital resources.
- In FY03 the Marine Corps awarded contracts for $1,858,790,919. ~56% of which $1,036,059,846 was for services. This is a prime opportunity to find efficiencies in what we buy and the manner in which we procure it.

Service Acquisition in the Real World

- At times dysfunctional.
- Requirements generation tends to occur in a vacuum.
- Tossed to Contracts in the 4th Qtr for execution this FY.
- Requirement shuffled to and fro for clarification and funding.
- No worries….there's always time to do it over.
- The result….substandard performance, not surprisingly.
- However, it does ensure full employment for lawyers.
- Any wonder why its broken?

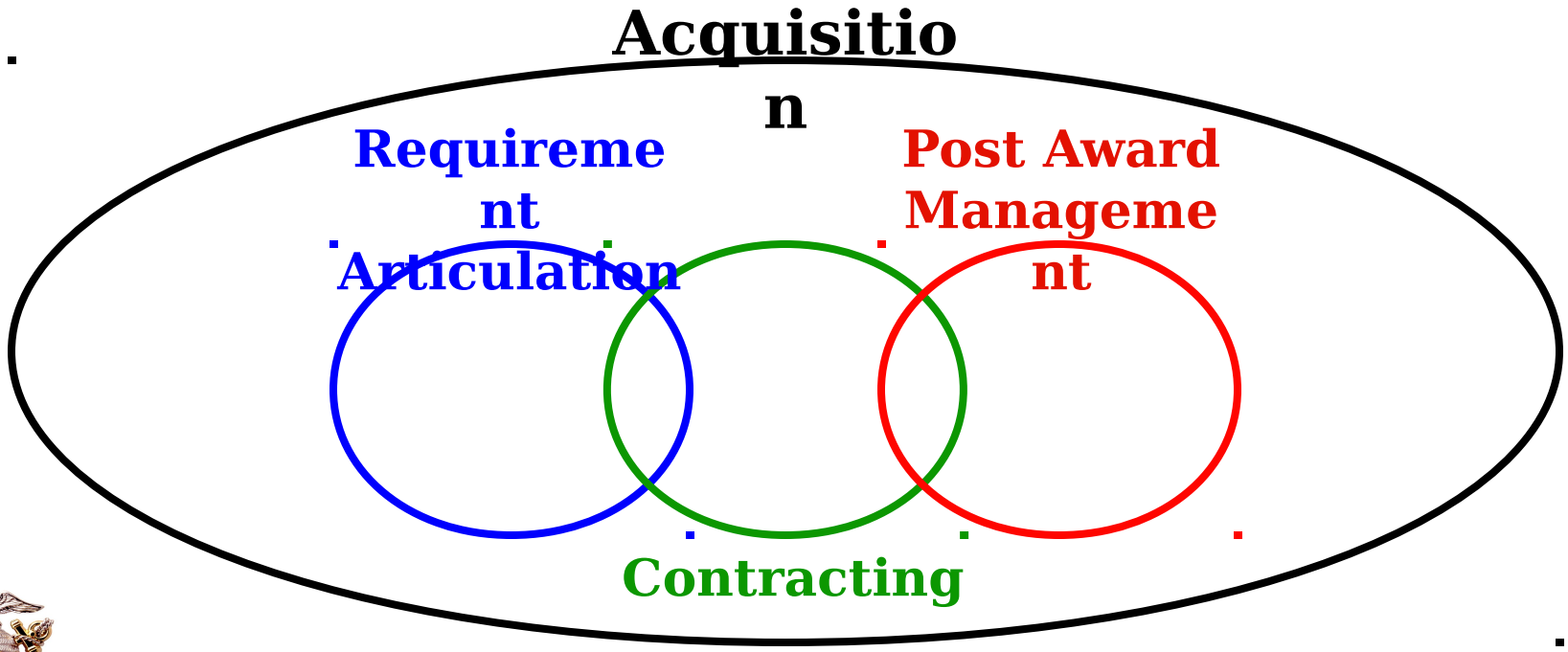
Service Acquisition in a Perfect World

1. Solid understanding of your requirements
   - Includes the law, policy and regulations that impact your requirement
   - Where your requirement fits into the Marine Corps Business Enterprise (Installation and/ or Regional Opportunities)
   - Where your requirement fits into the marketplace



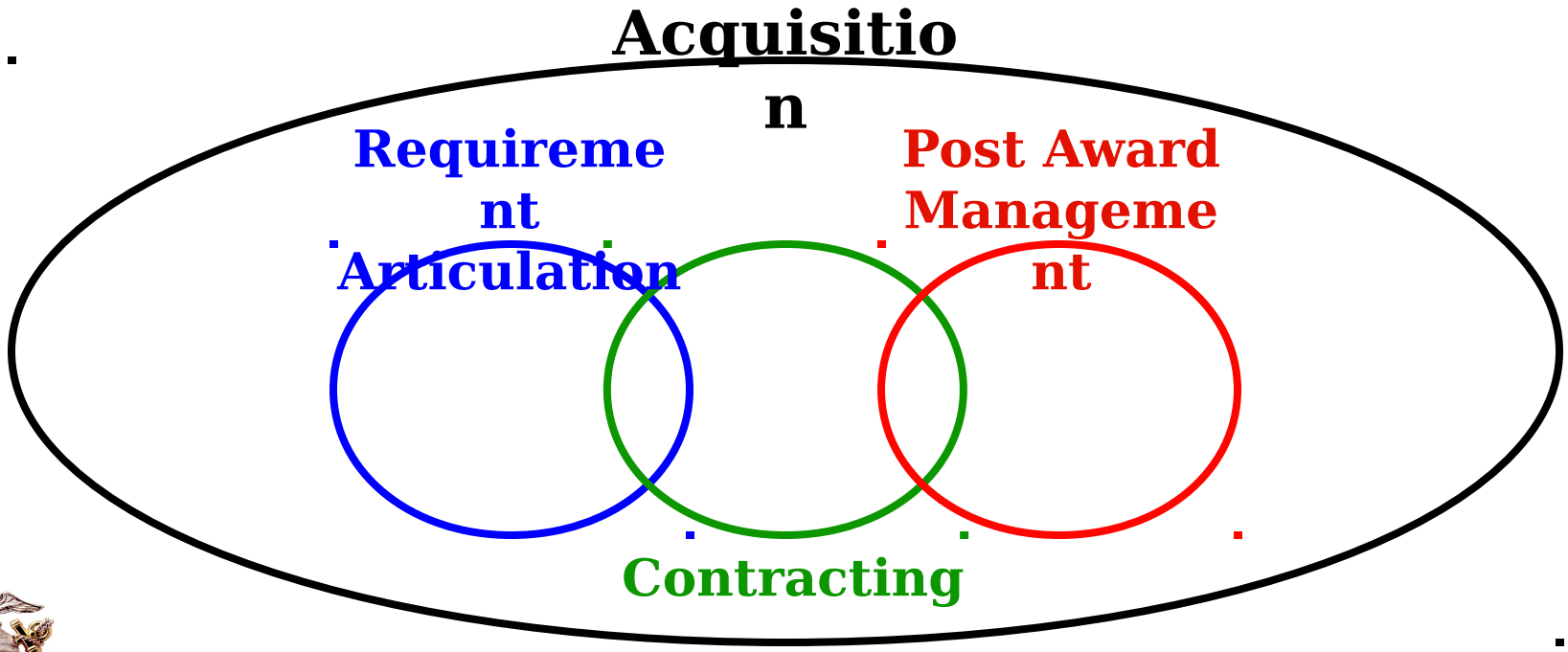
Service Acquisition in a Perfect World

2. Early and continuous communication with all players
   - BTW, there are more players than you think
   - E.g., Functional/ Program Manager, Small Business Specialist, Contracting Officer's Representatives (CORs), Contracting Officer, Legal Counsel, Comptroller, Business Manager



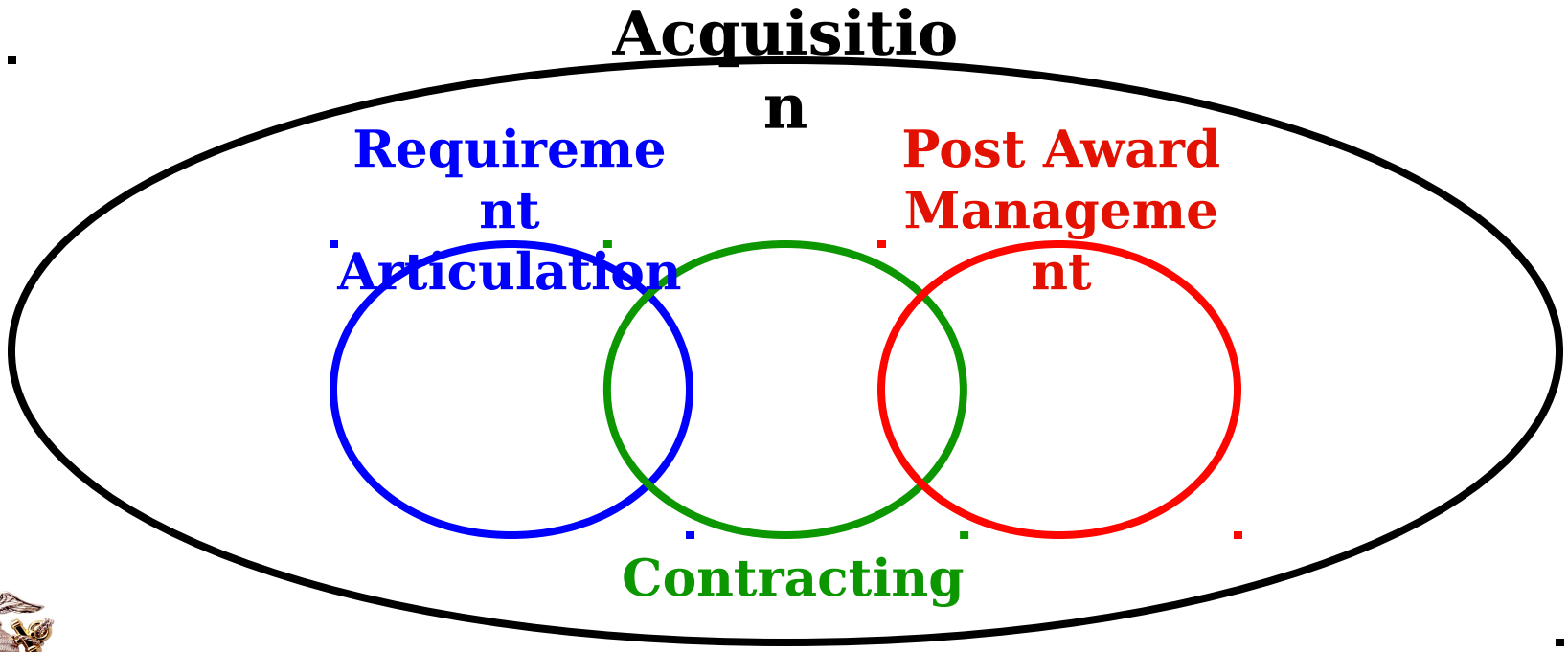
Service Acquisition in a Perfect World

3. Former “operators” now must become contract managers
   - Usually will perform as CORs
   - Requires new skills and knowledge
   - Effective communication with contractor and customer expectation management



Service Acquisition in a Perfect World

- Under no circumstances can service acquisition effectively function without the integration of thoughtful Requirement Articulation, Contracting, and Post Award Management



Requirement Articulation

- Requires knowledge of statutory, regulatory and policies that impact a given service.
  - E.g., 10 USC 2461, OMB Circular A-76 for displacement of 10 or more civilians.
- Must assemble the players early on to capitalize on functional expertise.
- Establish a timeline that allows for the process to evolve.
- Describe requirement in Performance Based terms whenever practicable.
  - In terms of “what” not “how”

Requirement Articulation

- Market research is essential to understanding how your requirement fits into the larger marketplace.
  - E.g. FAR Part 10
  - “Shopping does not equal Market Research.”
- Soliciting industry input is an excellent means of refining the description of your requirement as well as getting a better understanding of the market.
- Begins the process of framing the relationship with the contractor that is subsequently refined and solidified in the Contracting Phase.

Requirement Articulation: Food Service

- Internal review indicated Garrison Food Service in need of transformation.
- 11 separate contracts w/ Small Business concerns or Javits-Wagner-O'Day (JWOD) entities; many mess halls w/out contract support; costs increasing more rapidly than inflation.
  - 32 Mess halls on the East coast
  - 23 Mess halls on the West coast
- 2 regional contracts viewed as possible solution. Approach consistent with:
  - Overhead reductions mandated by Defense Reform Initiative
  - Best practices of commercial industry

Requirement Articulation: Food Service

- 2 regional contracts viewed as possible solution. Approach consistent with (cont'd):
  - Seeking greater efficiencies and standardization in the way we feed Marines.
- 1998, team assembled to develop Acquisition Plan.
  - Program Manager = GS-15, Director LFS
  - Deputy Program Manager = Maj/ LtCol Food Svc LDO
  - Small Business Specialist = GS-14
  - Contracting Officer = GS-14
  - Legal Counsel = GS-15
  - Others supported as required

Requirement Articulation: Food Service

- Assessment laws, policy, and regulations that would impact the requirement:
  - Small Business Act; Anti-Bundling Statute
  - JWOD Act
  - Randolph-Sheppard Act (unique to food service)
  - Defense Logistics Agency (DLA)/ Defense Supply Center Philadelphia (DSCP) Prime Vendor Program
- Market Research
  - Multiple food service studies conducted by LFS
  - Industry professional association contacts
  - Contracting Officer inquiries of Small Business Administration & Small Business concerns

Requirement Articulation: Food Service

- Market Research (cont'd)
  - Meetings w/ JWOD Committee
  - Request for Information (RFI) solicited from industry
- Statement of Work (SOW) development
  - Iterative process continuously incorporating feedback from field, SBA, JWOD and industry.
  - 2 year process (and continues today)
- Workable timeline established consistent with complexity and constraints
  - 1999, original target award date established w/ contract performance to begin 1 October 2000.

Contracting

- Development of evaluation criteria and incentive structure must be aligned with performance metrics and industry.
- Contract type and structure must also be aligned with performance metrics and industry.
- Expect the unexpected….there will be bumps on this road.
- Requires collaboration of all team players to frame the business relationship that will meet or exceed customer performance expectations.
- Incentive structure shouldn’t be limited to stick.
  - In business, the carrot often works better!

Contracting

- Conflict resolution & remedies are part of contracting.
  - Plan for means to address this and educate team members that the goal is to maximize performance
- Alignment of incentives and risk is crucial
  - CLINs should segregate varied levels of risk if possible

Contracting: Food Service

- Team stays together.
  - On average, team met twice a week for 4 years (1998 – 2002).
  - Until the exodus after the 1st year of contract performance that left the lawyer as the last man standing!
- Contract more performance based than previous food service contracts.
  - Still room for Performance Based Service Acquisition (PBSA) refinements.
- Contractor required to manage entire food service operation
  - Subsistence procurement, food preparation and clean up.

Contracting: Food Service

- Contract Type & Structure
  - Fixed Price Incentive – 50/50 Share Ratio
  - Price per meal
- Evaluation of proposals considered Contractor's
  - Ability to exploit advanced food technology.
    - — Cook-chill vs. cook-serve.
  - Contractor's Small Business subcontracting plan
  - Past performance on similar contracts
- A total of 17 pieces of litigation followed….but we prevailed!
  - Agency, GAO bid protest, COFC, CAFC, Supreme Court

Post Award Management

- Maintenance of the relationship with the contractor that was developed in the two preceding phases.
- Customer or service recipient expectation management.
- This phase entails some hand holding!
  - The acquisition of services on the scale that we are now proceeding with represents a significant paradigm shift from status quo business practices.
- New skill sets must be developed to accomplish this.
  - Business Performance Offices (BPOs) are uniquely qualified to facilitate this training and education for your functional Subject Matter Experts (SMEs)

Post Award Management

- Personnel interfacing directly with the Contractor must understand how to drive performance
  - This is fundamentally different than managing/ supervising Government personnel.
  - Requires an understanding of contracting, business environment and subcontract relationships as well as functional knowledge.

Post Award Management: Food Service

- Team still working….
- Change in culture is ongoing.
  - Requires continuous communication between DC, I&L and field Commanders.
  - Commander's Guide published to familiarize field Commanders with the paradigm shift necessary for successful implementation.
  - Hubs have assumed contract management during contract year 2; necessitating communication to maintain consistent approach to contractor.
- Managing the Contractor vs. managing the mess hall continues to challenge.
  - Quality Assurance Surveillance Plan (QASP)
  - Process surveillance!

Questions/ Comments

- Was a backup slide but we didn’t have anything to back this up with!

Major Matthew Fowler

Major Matthew Fowler, a native of Portland, Oregon, graduated from Carnegie Mellon University in Pittsburgh, PA in 1993 with a Bachelor of Science degree in Applied History and was commissioned a Second Lieutenant in the Marine Corps. Following completion of The Basic School in Quantico, Virginia, he reported to Pensacola, Florida for Flight Training and was winged a Naval Aviator in March 1996.

He then underwent initial training in the CH-53E Super Stallion helicopter and was assigned to Marine Air Group (MAG) 16, 3rd Marine Air Wing (MAW) at Marine Corps Air Station El Toro, CA in July 1996. While assigned to MAG-16, Captain Fowler served in several billets in two operational squadrons and was deployed to Okinawa, Japan and afloat to the Western Pacific and Persian Gulf.

In June 2000, Captain Fowler was accepted to and attended the Naval Postgraduate School in Monterey, California. He subsequently graduated in December 2001 earning a Master of Science Degree in Management focused on Acquisition and Contract Management. He was then assigned to the Marine Corps Support Activity, Kansas City, Missouri, where he served as the Executive Officer and Contracting Officer.

In October 2003, Major Fowler was assigned to Headquarters Marine Corps, Installations and Logistics Department, Contracts Division where he assumed Procuring Contracting Officer responsibilities for the Regional Garrison Food Service Contract. Major Fowler remains engaged in the administration of the contract while assisting the Regional Contracting Office Hubs who have assumed management responsibility of the contract.

JULIUS ROTHLEIN (GS-15)
Associate Counsel for the Commandant (Procurement & Fiscal Law)

A. Current Position: Senior procurement and fiscal law attorney in the U.S. Marine Corps (USMC) responsible for supporting all Headquarters Elements of the USMC on all procurement, competitive sourcing, and fiscal law matters. Provides legal advice and support to the Field Offices of the Office of Counsel, and the Marine Corps Field Contracting System worldwide. Represents the interests of the USMC before the General Accounting Office (GAO), the Armed Services Board of Contract Appeals (ASBCA), and supports the Department of Justice in USMC matters before the Court of Federal Claims (COFC), and the Court of Appeals for the Federal Circuit (CAFC). Serves as the primary mentor for the Navy Office of General Counsel Summer Law Clerk and the Harvey Wilcox Fellow.

B. Employment:

*** Civilian Assignments**:

-- Department of the Navy, Associate Counsel for the Commandant (Procurement & Fiscal Law), Headquarters, USMC, Pentagon (May 1996 to Present). See description above.

*** Military Assignments:**

-- **Assistant to the Army General Counsel, Pentagon (1993 - 1996).** Supported ASA (RD&A) in the formulation of acquisition strategies for Army aviation, command and control, and major weapon systems. Chaired one of the 11 teams that implemented numerous acquisition reform measures enacted by the Federal Acquisition Streamlining Act of 1994. Recipient of Vice President Gore's "Hammer Award" for acquisition reform efforts.

-- **Chief Remedies Branch, Army Procurement Fraud Division and Chairman FAR Suspension, Debarment, and Business Ethics Committee, Arlington, VA (1991- 1993).** Responsible for developing Army and DoD policy and procedures that sought to discourage misconduct by government contractors.

-- **Tax and Property Law Attorney, Contract Law Division, OTJAG, Pentagon (1989 - 1991).** Provided HQDA advice on the taxation of government contractors by state and local governments. Provided HQDA guidance concerning the acceptance of property and money from foreign and domestic sources in support of Operation Desert Shield/Storm.

-- **Deputy Staff Judge Advocate, 1st Infantry Division (Forward), Goeppingen, Germany (1986 - 1988).** Supervised all of the daily operations of the legal office that supported over 14,000 soldiers, civilians, and family members. Mission included: military justice, administrative law, legal

JULIUS ROTHLEIN
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B. Employment (continued)
-- **Attorney Advisor, Contract Law Division, U.S. Army Europe. Heidelberg, Germany (1984 -1986).** Served as the legal advisor to the EUCOM and USAREUR team that negotiated the $345 million U.S. - Germany Host Nation Support Agreement, which provided 85,000 German reservists and equipment to reinforce US Forces with support in the event of hostilities in Europe.
-- **Associate Professor of Law, Contract Law Division, The Judge Advocate General's School, U.S. Army, Charlottesville, VA (1981-1984).** Taught a wide variety of legal subjects to military and civilian attorneys from all of the Services, OSD, and the Civilian Agencies of the U.S. Government.
-- **Attorney, Defense Appellate Division, USALSA, Falls Church, VA (1978 - 1980)**. Represented soldiers on appeal, challenging their courts-martial convictions before the U.S. Army Court of Military' Review and U.S. Court of Military, Appeals.
-- **Senior Prosecutor; Chief Defense Counsel; and Administrative Law/Contracts Attorney, 101st Airborne Division (Air Assault) Fort Campbell, Kentucky (1975 - 1978).** Prosecuted and defended over 100 soldiers charged with offenses under the UCMJ before General and Special Courts-Martial. Supervised five-defense counsel in an active courts-martial jurisdiction. One of four attorneys who deployed with the Division on REFORGER 76. Purpose of the exercise was to establish the viability of air assault operations against mechanized and armored units in the field. Provided legal reviews and advice to the installation's purchasing and contracting office.

C. Education:
***Civilian Education**:
BA – Rutgers University (1971), Commissioned 2LT via Army ROTC Program;
JD – Rutgers University School of Law, Camden (1974);
LLM – The George Washington University (Masters of Laws – Government Procurement Law) (1989).

*** Military Education**:
TJAGSA Basic Course (1975);
TJAGSA Graduate Course (1981);
Combined Armed Staff Services School (1982);
Command and General Staff College (1988).

JULIUS ROTHLEIN
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D. Awards:

*** Civilian Awards**:

1997 --Monetary Performance Award
1998 – Monetary Performance Award
1999 – Quality Step Increase
2000 – Monetary Performance Award
2001 – Monetary Performance Award
2002 – Monetary Performance Award
2003 – Monetary Performance Award
2003 – Department of the Navy Superior Civilian Service Award
2003 – Department of the Navy Competition and Procurement Excellence Award

*** Military Awards**:

Legion of Merit (2 awards);
Meritorious Service Medal (2 awards);
Army Commendation Medal (4 awards);
Army Achievement Medal;
National Defense Service Medal;
Overseas Service Ribbon;
Army Service Ribbon;
Army Staff Badge;
1995 – "The Hammer Award" for Acquisition Reform under FASA.

E. Julius Rothlein served on active duty in the Judge Advocate General's Corps, U.S. Army, for 21 years retiring as a Lieutenant Colonel on 1 August 1996.